Alan Zawilinski, a Sole Proprietor d/b/a Michigan Sprinkler Company *and* Road Sprinkler Fitters Local Union No. 69, U.A., AFL–CIO. Cases 7–CA–33022, 7–CA–33057, and 7–CA–33296

September 30, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Upon charges filed by the Union on March 10 and 19, 1992, in Cases 7–CA–33022 and 7–CA–33057, respectively, and a charge filed by the Union on May 19, 1992, in Case 7–CA–33296, the General Counsel of the National Labor Relations Board issued complaints, which were consolidated for hearing by order dated June 30, 1992, against Alan Zawilinksi, a sole proprietor d/b/a Michigan Sprinkler Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served with copies of the charges and complaints, the Respondent has failed to file an answer.

On August 28, 1992, the General Counsel filed a Motion for Summary Judgment. On September 1, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaints state that unless an answer is filed within 14 days of service, ''all the allegations [in said complaints] shall be considered to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent was notified by letter dated June 17, 1992, that unless an answer to the order consolidating cases, consolidated complaint and notice of hearing issued in Cases 7–CA–33022 and 7–CA–33057 was received by June 30, 1992, a Motion for Default Judgment would be filed. In Case 7–CA–33296, a similar letter was sent advising the Respondent that unless an answer was received by July 31, 1992, a Motion for Default Judgment would be filed. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a sole proprietorship with an office and place of business in Bay City, Michigan, where it has been engaged in the nonretail sale and installation of fire protection systems. During the year ending December 31, 1991, a representative period, the Respondent, in the conduct of its business operations, provided services valued in excess of $50,000 to Gerace Construction, an enterprise within the State of Michigan that annually provides construction services in excess of $100,000 for companies located in the State of Indiana. During the same period, the Respondent, in the course and conduct of its business operations, purchased and received at its Bay City, Michigan facility goods valued in excess of $50,000 from other enterprises, including Etna Supply Company of Southeastern Michigan located within the State of Michigan, which received these goods directly from points outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On February 20, 1990, the Union was certified as the exclusive representative of the Respondent's employees in an appropriate unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, pursuant to a Board-conducted election held on February 9, 1990, in Case 7–RC–19158. By virtue of Section 9(a) of the Act, the Union has been and is the exclusive bargaining representative of all the Respondent's unit employees. The appropriate bargaining unit consists of:

> All full-time and regular part-time pipefitters, sprinkler fitters, plumbers, apprentices, helpers and laborers employed by Respondent at and out of its Bay City, Michigan facility; but excluding all office clerical employees, designers, janitorial employees, estimators, professional employees, guards and supervisors as defined in the National Labor Relations Act, and all other employees.

Since about October 21 and 24, November 6, and December 4, 1991, the Union has requested, and since about October 21, 1991, the Respondent has refused to provide, certain information that is necessary for and relevant to the Union's performance of its duties as the

exclusive collective-bargaining representative of the Respondent's unit employees.[1] Further, since on or about May 14, 1992, the Respondent has refused the Union's requests, made about March 1991 and on or about May 14, 1992, and again by letter dated May 18, 1992, for information regarding the number of jobs the Respondent currently had under contract, and a list of current unit employees, including their wage rates, hire dates, and addresses, which information was also necessary for and relevant to the Union's performance of its collective-bargaining obligations.

Since on or about May 14, 1992, the Respondent has also engaged in bad-faith bargaining by approaching negotiations without any intent to engage in meaningful bargaining, by insisting on a contract clause that would make any agreement nonbinding on the parties, and by failing and refusing to proffer any contract proposals to the Union. Finally, on or about March 2, 1992, the Respondent, without first notifying or bargaining with the Union, announced the institution of a mandatory overtime policy for March 1992, a mandatory bargaining subject. By engaging in all the above-described conduct, we find that the Respondent has failed and refused and is failing and refusing to bargain collectively and in good faith with the Union as the exclusive bargaining representative of its unit employees, and has violated Section 8(a)(5) and (1) of the Act, as alleged.

[1] In an October 21, 1991 letter, the Union requested the Respondent provide it with the following information:

> (1) Any and all documents demonstrating that your organization is now out of business or is winding down its affairs, including, but not limited to, any documents such as corporate dissolution papers and/or cancellation of licenses. A detailed explanation why the company is no longer, or will no longer be, in the sprinkler business; (2) Any and all documents reflecting any relationships or arrangements your organization has made with other entities for the continuation of, or performance of, jobs originally contracted by your company. This information includes but is not limited to subcontracting agreements (within the past twelve months) and/or asset sales or leases; (3) Any and all documents reflecting any relationship your organization has with any other entity engaged in business in the sprinkler industry. This information includes but is not limited to documents reflecting common ownership, common employees, common assets, common management, and/or common jobs; (4) A complete listing of all jobs your organization is currently performing or is scheduled to perform in the future; (5) A listing of any sprinkler work your organization has performed in the past six months, and for each such job, state its location, its duration, and the names, addresses, and social security numbers of any persons who performed sprinkler work on the job.

In an October 24, 1991 letter, and reiterated in letters dated November 6 and December 4, 1991, the Union requested the Respondent provide it with an explanation about ''some type of bankruptcy meeting'' the Respondent was to have on December 5, or why it is being held; the name, address, and telephone number of the bankruptcy trustee that Respondent claimed had put restraints on it regarding negotiations, and a written statement from the trustee as to what the Respondent ''can and cannot negotiate at this time.''

CONCLUSION OF LAW

By refusing to provide the Union with necessary and relevant information, approaching negotiations without any intent to engage in meaningful bargaining, insisting on a contract clause that would make any agreement nonbinding on the parties, failing and refusing to proffer any contract proposals to the Union, and announcing the institution of a mandatory overtime policy without first notifying or bargaining with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.[2]

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be ordered to bargain in good faith with the Union with respect to the unit employees' wages, hours, and other terms and conditions of employment. We shall further order the Respondent to provide the Union with requested information, and to rescind the mandatory overtime policy it implemented in March 1992.

ORDER

The National Labor Relations Board orders that the Respondent, Alan Zawilinski, a sole proprietor d/b/a Michigan Sprinkler Company, Bay City, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Road Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO, which is the exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit, by approaching negotiations without any intent of engaging in meaningful bargaining, insisting on a contract clause that would make any agreement nonbinding on the parties, and failing and refusing to proffer any contract proposals to the Union. The appropriate bargaining unit consists of:

[2] Member Oviatt would not require the Respondent to provide social security numbers to the Union without some specified reason that they are relevant as alleged in the complaint. Under current law an employer is not obliged to submit social security numbers of employees to a union without actual proof of their relevance. *Sea-Jet Trucking Corp*., 304 NLRB 67 (1991).

There is no explanation in the complaint of the relevance of social security numbers here. The complaint merely incorporates by reference the union information requests in this respect. That is not a proper basis, in his judgment, for requiring the revelation of this sensitive information which is not presumptively relevant. To the extent the rationale of *Fire Sprinkler Installers*, 306 NLRB No. 103 (Feb. 28, 1992) (not reported in Board volumes), may be to the contrary, he would, on reflection, overrule it.

All full-time and regular part-time pipefitters, sprinkler fitters, plumbers, apprentices, helpers and laborers employed by Respondent at and out of its Bay City, Michigan facility; but excluding all office clerical employees, designers, janitorial employees, estimators, professional employees, guards and supervisors as defined in the National Labor Relations Act, and all other employees.

(b) Instituting a mandatory overtime policy without first notifying or affording the Union an opportunity to bargain over such policy, and failing and refusing to provide the Union with information that is necessary and relevant to the Union's performance of its duties as exclusive collective-bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees with respect to their wages, hours, and other terms and conditions of employment.

(b) Provide the Union with the requested information that is necessary for and relevant to the Union's performance of its role as the exclusive bargaining representative of the unit employees, and rescind the mandatory overtime policy implemented in March 1992.

(c) Post at its facility in Bay City, Michigan, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Road Sprinkler Fitters Local Union No. 669, U.A., AFL–CIO, which is the exclusive bargaining representative of our employees in an appropriate unit, by approaching negotiations without any intent of engaging in meaningful bargaining, insisting on a contract clause that would make any agreement nonbinding on the parties, and by failing and refusing to proffer any contract proposals to the Union. The appropriate bargaining unit consists of:

All full-time and regular part-time pipefitters, sprinkler fitters, plumbers, apprentices, helpers and laborers employed by Alan Zawilinski, a Sole Proprietor d/b/a Michigan Sprinkler Company at and out of its Bay City, Michigan facility; but excluding all office clerical employees, designers, janitorial employees, estimators, professional employees, guards and supervisors as defined in the National Labor Relations Act, and all other employees.

WE WILL NOT implement a mandatory overtime policy without first notifying the Union or providing it an opportunity to bargain over such policy, and WE WILL NOT fail and refuse to provide the Union with information that is necessary for and relevant to the performance of its role as exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union with respect to the unit employees' wages, hours, and other terms and conditions of employment.

WE WILL rescind the mandatory overtime policy implemented in March 1992, and WE WILL provide the Union with the requested information.

ALAN ZAWILINSKI, A SOLE PROPRIETOR
D/B/A MICHIGAN SPRINKLER COMPANY